

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO WARREN EDMONDS,

Defendant-Appellant.

UNPUBLISHED

December 16, 2014

No. 318262

Oakland Circuit Court

LC No. 2012-242058-FH

Before: DONOFRIO, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of first-degree home invasion, MCL 750.110a(2), and aggravated stalking, MCL 750.411i. He was sentenced as a fourth habitual offender, MCL 769.13, to 21-1/2 to 40 years of imprisonment for each conviction. We affirm.

Defendant and the victim dated for a year and a half before breaking up in May 2012. The day after their break up, the victim received numerous harassing phone calls from defendant requesting that she bring his belongings back. She brought defendant's things to his home and allowed defendant to use her cell phone. The two of them proceeded to argue, and defendant refused to give the cell phone back. The victim then went to her mother's home, which was a short distance away. But defendant followed her, and when he arrived at the house, he destroyed the windows of a van parked outside and, a short time later, threw bricks through the home's front picture window. The victim went into hiding and eventually obtained a personal protection order on June 1, 2012.

Arthur Newby testified that his mother was the victim's neighbor and the victim would keep an eye on his mother; thus, the victim had his contact information. Newby further testified that on June 23, 2012, he received a call from an unknown male who was asking about the victim. The male asked Newby about the victim, and when Newby responded that he did not have any information about her, the male stated, "I guess I'll have to crack her skull when she gets home." Being concerned, Newby called the police, and the police performed a welfare check at the victim's home. After obtaining entry into the victim's home, they found that the house had been severely vandalized, including writing on the wall that was identified as being defendant's. The victim later arrived at the house and, after police left, defendant was found hiding in the bedroom. Police returned and apprehended defendant from the home.

I. JURY INSTRUCTION

Defendant first argues that he was deprived of a fair trial by the trial court's failure to give a limiting instruction regarding "other acts" evidence.¹ Defense counsel filed a motion in limine requesting that evidence regarding the incident at the victim's mother's home be excluded. The trial court found that the evidence was admissible with regard to the aggravated stalking charge but not admissible with respect to the home invasion charge. The court noted that a limiting instruction would be given if requested by defense counsel at the time of trial, but none was requested at trial.

However, because defense counsel ultimately expressed satisfaction with the jury instructions as given, defendant waived the issue, and any error is extinguished. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000).

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next claims that his trial counsel was ineffective for various reasons. The determination of whether a defendant has been denied the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel. *Id.* The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.* Because no evidentiary hearing was held, our review is limited to mistakes apparent on the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007), citing *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973).

Defendants have the guaranteed right to the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Aceval*, 282 Mich App 379, 386; 764 NW2d 285 (2009). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *LeBlanc*, 465 Mich at 578. "In order to obtain a new trial, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51-52; 826 NW2d 136 (2012).

¹ With regard to other acts evidence, MRE 404(b)(1) provides the following:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Defendant first argues that his trial counsel's performance was deficient when she failed to request a limiting instruction with respect to the other acts evidence discussed earlier. The instruction simply would have instructed the jury to not consider the evidence in relation to the home invasion charge. We need not decide whether counsel's performance fell below an objective level of reasonableness because, even assuming *arguendo* that it did, defendant still cannot prevail because he has not established by a "reasonable probability" that counsel's error was outcome determinative. There was overwhelming evidence that defendant committed the crime of first-degree home invasion. The victim testified that defendant did not have permission to be in the house,² and defendant was found hiding in the victim's house after the police had been alerted that it had been severely vandalized. If a limiting instruction had been given for the other acts evidence, it would have had no effect on the jury's home invasion verdict.

Defendant next argues that his counsel was ineffective for failing to investigate his version of events and for failing to subpoena records of text messages. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 US at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*

Defendant first claims that he was not hiding in the house when the police arrived and that, in fact, he was trying to clean it up when the police found him. Consequently, defendant argues that his trial counsel should have pursued this line of defense. However, in support of this position, defendant relies on an affidavit he filed with this Court. Our review is limited to the lower court record, *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998), and a party may not expand the record on appeal, *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Therefore, we will not consider the affidavit. Consequently, defendant's claim fails because there is nothing in the record to show how any further investigation or different questioning by his trial counsel would have been fruitful.

Defendant also argues that his trial counsel was ineffective for failing to subpoena text messages where witnesses testified that they received threatening messages from him. However, three witnesses, including the victim's mother, testified that they received threatening telephone calls and "messages" from defendant, but they did not say that they received "text messages." As a result, trial counsel's failure to subpoena any text messages was objectively reasonable. On the record before this Court, defendant has failed to establish ineffective assistance of counsel regarding a failure to investigate or present a defense.

III. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that there was insufficient evidence to prove that he committed the crime of first-degree home invasion beyond a reasonable doubt. This Court reviews sufficiency of the evidence arguments *de novo* on appeal. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). The evidence is reviewed in a light most favorable to the prosecution to

² Plus, a personal protection order also prohibited defendant from entering the victim's premises.

determine whether a trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

In *People v Wilder*, 485 Mich 35; 780 NW2d 265 (2010), the Court discussed the elements of first-degree home invasion, and noted that the crime could be committed in several different ways. The *Wilder* Court broke down the elements as follows:

Element One: The defendant *either*:

1. breaks and enters a dwelling or
2. enters a dwelling without permission.

Element Two: The defendant *either*:

1. intends when entering to commit a felony, larceny, or assault in the dwelling or
2. at any time while entering, present in, or exiting the dwelling commits a felony, larceny, or assault.

Element Three: While the defendant is entering, present in, or exiting the dwelling, *either*:

1. the defendant is armed with a dangerous weapon or
2. another person is lawfully present in the dwelling. [*Id.* at 43 (emphasis in original).]

On appeal, defendant challenges only whether the first element was satisfied. He claims that there was no evidence that he broke into the house and that the mere fact that he possessed a key to the victim's house means that he had permission to enter the premises. But defendant ignores the unrefuted testimony of the victim, who stated that (1) she never gave defendant a key and (2) defendant did not have permission to be in the home at the time. Consequently, there was sufficient evidence for a jury to find that the first element of first-degree home invasion was proven beyond a reasonable doubt.

IV. STANDARD 4 BRIEF

Defendant raises several additional issues in a supplemental brief filed in propria persona pursuant to Supreme Court Administrative Order No. 2004–6, Standard 4.

First, defendant argues that the trial court lacked jurisdiction over this matter because the trial court's record did not contain a properly signed complaint and there was no record of a properly docketed complaint. Because this issue was never raised at the trial court, we review for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant is mistaken about the existence of a properly filed complaint in this matter. A complaint was filed in the district court and was returned to the

circuit court. The complaint in the record is signed by the prosecutor and a judicial officer. The complaint is properly entered into the district court's register of actions. The district court's register of actions, along with the complaint/general information, the bindover/transfer after preliminary examination, and the order for custody, were filed together in the circuit court and properly stamped as filed. Moreover, even if any irregularity in the complaint existed, it would only invalidate any resulting arrest warrant—it does not act to deprive the circuit court of jurisdiction. See *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974). Accordingly, defendant has not established that the trial court or district court lacked jurisdiction.

Next, defendant argues that he was denied a fair trial by prosecutorial misconduct when the prosecutor (1) used perjured testimony, (2) repeatedly vouched for the credibility of witnesses, and (3) argued facts not in evidence. However, in his brief, defendant fails to reference or identify what specific conduct constituted the alleged prosecutorial misconduct. “An appellant may not merely announce his position and leave it to the Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation or supporting authority.” *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, defendant's failure to properly brief the issue results in it being abandoned. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004).

Finally, defendant argues that his counsel was ineffective for failing to challenge a juror for cause. In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was sound trial strategy. *Strickland*, 466 US at 689. The juror in question first stated during voir dire that a defendant's prior history would cause him some concern because he believed that “where there's smoke, there's fire,” and he would have a hard time separating that out. However, upon further questioning by the trial court, the juror agreed that he could follow the law and find defendant not guilty if the prosecution failed to prove defendant guilty beyond a reasonable doubt.

Furthermore, as the United States Supreme Court stated in *Irvin v Dowd*, 366 US 717, 723; 81 S Ct 1639; 6 L Ed 2d 751 (1961):

To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Therefore, defendant has not established ineffective assistance of counsel where a challenge to

the juror for cause would have been futile. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010) (stating that counsel is not ineffective for failing to make a futile objection).

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro